REMARKS

Status of the Claims

Claims 1-57 were pending. Claims 31, 35-46 and 48-57 have been canceled without prejudice or disclaimer. Claim 15 has been amended. No new matter has been added.

Claim Amendment

Claim 15 has been amended to recite "complex comprises performing" versus "complex performing." Support for this amendment can be found throughout the application but at least at pages 3, 19 and 30 and claims 15, 26 and 40 in the application as originally filed.

Restriction

The Action imposed a 2-way restriction requirement as follows: Group I (claims 1-15, drawn to method of identifying fetal cells in maternal sample); and Group II (claims 16-30, 32-34 and 47, drawn to method of enriching fetal cells).

A provisional election is made to the claims of Group I (claims 1-15, drawn to method of identifying fetal cells in maternal sample).

Traversal of the Restriction Requirement

Groups I, and II

The Office Action imposed a two-way restriction requirement into Group I (claims 1-15); and Group II (claims 16-30, 32-34, and 47). Applicant respectfully traverses the restriction requirement.

The Action asserts that, "…Groups I and II are distinct methods that do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: Group I obtains a maternal blood sample and reacts it with maternal produced antibodies specific for paternally-inherited fetal antigens to

determine the presence of specific fetal cells present in a maternal blood sample; and Group II isolates a fraction of mononuclear cells present in a blood sample, contacts the sample with maternal produced antibodies specific for paternally-inherited fetal antigens, further contact the sample comprising fetal cells with a complexing agent, and then recovers the cell complexes using FACS so as to obtain an enriched population of fetal cells present in maternal blood sample." Applicant respectfully traverses.

The Applicant respectfully submits that the pending claims related to the element of identifying fetal cells. The Applicant was the first to determine that antibodies from a maternal sample can be used to detect fetal cells in a maternal sample. This embodiment encompassed by claim 1 and claim 16 of Groups I and II, as asserted by the action, rely on detecting maternal antibodies bound to a fetal cell and claim 16, as asserted in the action, is directed to recovering fetal cells bound to maternal antibodies.

The Applicant submits that to enrich the fetal cells of Group II the fetal cells are first identified as disclosed in Group I. As a result, the method of claim 1 is an element of the claims in Group II. and all of the claims include this element or technical feature. For example, claim 14 which is dependent upon claim 1 discloses using 'a paramagnetic particle' as a label and a magnet to identify or sort fetal cells and claim 15 which depends from claim 1 includes the element of fluorescence activated cell sorting to identify fetal cells, where in both of these examples the fetal cells are identified by enriching them from the sample.

The Applicant respectfully submits that each of the pending claims clearly share the same technical feature or common element, detecting maternal antibodies bound to a fetal cell. Thus, Groups I and II should be rejoined. Therefore, the Applicant deems the restriction requirement is improper.

CONCLUSION

For the reasons stated above, the Applicant asserts that the restriction requirement is improper. In the event Groups I and II are not rejoined, the Applicant has provisionally elected Group I.

Respectfully submitted,

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